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DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Part 5119

[Docket No. USA-2019-DARS-0011]

RIN 0702-AB05

Repeal of Obsolete Acquisition Regulation: Small Business and Small Disadvantaged Business Concerns

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This final rule removes an obsolete Army acquisition regulation which was codified to implement a section of public law that is no longer in effect. This rule has been made obsolete by time and the existence of higher-level regulation.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This final rule will remove 48 CFR part 5119, "Small Business and Small Disadvantaged Business Concerns," which was codified on April 18, 1989 (54 FR 15410), and never updated. The purpose of the rule was to implement Public Law 100-656, section 722, "Expanding small business participation in dredging," which directed the Secretary of the Army to conduct a program to expand the

participation of small business concerns in contracting opportunities for dredging. The authority was effective through 30 September 1992.

Current Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS) provides for maximum practicable opportunity to small businesses at both the prime contract and subcontract levels. For example, FAR 19.502-1, which provides requirements for setting aside acquisitions for small businesses, was codified on December 18, 1998 (63 FR 70270) and most recently updated on July 2, 2015 (80 FR 38298). The clause at FAR 52.219-6, "Notice of Total Small Business Set-Aside," (codified September 19, 1983 (48 FR 42478) and most recently updated November 2, 2011 (76 FR 68036)) and other FAR clauses for set-asides under specific small business categories (e.g., women-owned small businesses), along with the clause at FAR 52.219-9, "Small Business Subcontracting Plan," (codified September 19, 1983 (48 FR 42478) and most recently updated August 22, 2018 (83 FR 42571)) are used to ensure maximum small business participation at the prime and subcontractor levels. The expiration of the statutory authority and the existence of higher-level regulations concerning small business participation made the rule at part 5119 obsolete.

The removal of this text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations. The DoD Task Force reviewed the requirements

of 48 CFR part 5119 and determined that the coverage was obsolete and recommended removal.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing obsolete information. Additionally, the statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled “Publication of Proposed Regulations.” Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the Army is not issuing a new regulation; rather, this rule merely removes obsolete parts from chapter 51 of title 48 of the CFR.

This rule is not significant under Executive Order (EO) 12866, “Regulatory Planning and Review”; therefore, the requirements of EO 13771, “Reducing Regulation and Controlling Regulatory Costs” do not apply.

List of Subjects in 48 CFR Part 5119

Government procurement.

PART 5119—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 48 CFR part 5119 is removed.

Brenda S. Bowen,
Army Federal Register Liaison Officer.
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